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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

CASE NO.: 4:20-cv-03664-YGR-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' ADMINISTRATIVE
MOTION FOR RELIEF RELATING TO
GOOGLE'S IMPROPER WITHHOLDING
OF NON-PRIVILEGED DOCUMENTS**

1 Before the Court is Plaintiffs' Administrative Motion seeking relief relating to Google's
2 improper withholding of non-privileged documents. Having considered the parties' papers filed
3 in support of and in opposition to Plaintiffs' Motion, and all other matters properly considered
4 by this Court, the Court **GRANTS** Plaintiffs' Motion.

5 Based on Plaintiffs' privilege challenges, and this Court's re-review orders, Google has
6 now produced over 1,300 documents previously withheld as privileged. Mao Decl. ¶¶ 11-14. The
7 majority of these documents were produced after the close of fact discovery and after Plaintiffs
8 served their opening expert reports, including 907 documents produced after all expert reports
9 were served. *Id.* This Court has already expressed concern about Google's "significant correct
10 rate" in its privilege re-reviews, which ranged from 25% to 37.1%. Dkts. 522, 566. In the chart
11 attached as Exhibit A to the Mao Declaration, Plaintiffs summarize 15 examples of documents
12 that Google produced after the close of fact discovery, and show how these documents undermine
13 various positions that Google has taken in the case.

14 Google's improper withholding of these and other non-privileged documents violated this
15 Court's August 12, 2021 order that "[d]ocument productions to be completed . . . by October 6,
16 2021." Dkt. 242-1 at 1. Google's violation of that order has prejudiced Plaintiffs. Google
17 deprived Plaintiffs of an opportunity to obtain additional discovery about these documents,
18 including discovery to (1) further support these documents' admissibility and (2) determine how
19 Google may try to counter Plaintiffs' reliance on these documents (at any stage of the case).
20 Without that additional discovery, Plaintiffs have no way to rebut any Google say-so regarding
21 these documents.

22 Accordingly, pursuant to Federal Rule of Civil Procedure 37(b)(2)(A), the Court orders
23 as follows:

24 For any document or portion thereof that Google initially withheld as privileged, and then
25 produced after the March 4, 2022 close of fact discovery:

- 26 • Plaintiffs may admit any of these documents at any time without a sponsoring witness;

- For the duration of the case, Google may not affirmatively rely on any of these documents for any purpose; and
- For the duration of the case, Google may not rely on any witness for the purpose of rebutting Plaintiffs' arguments about what these documents convey.

IT IS SO ORDERED.

DATED: _____

Honorable Susan van Keulen

United States Magistrate Judge